

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 04-12317 WGY

AMERICAN TOWER CORPORATION,  
Plaintiff,

v.

J.L.B. CONSTRUCTION, INC., 21<sup>ST</sup>  
CAPITAL CORPORATION, PRIME  
COMMUNICATIONS, LLC, WEST  
CENTRAL CONSULTING SERVICES,  
INC. and STEWART ELECTRIC, INC.,  
Defendants.

**PLAINTIFF'S MOTION TO VACATE ORDER OF DISMISSAL**

---

NOW COMES the Plaintiff American Tower Corporation ("American Tower" or the "Plaintiff") and hereby moves to vacate the entry of an order of dismissal, dated May 19, 2005, in the above-captioned action. Specifically, the Plaintiff hereby requests that the Court vacate the entry of the order of dismissal in order to allow the parties time to continue to participate in settlement negotiations and obtain execution of a final settlement agreement or, in the event that settlement cannot be reached, to allow the parties to proceed with litigation and further discovery.

In support hereof, the Plaintiff states as follows:

On or about May 17, 2005, American Tower and the non-defaulted Defendants JLB Construction, Inc., 21<sup>st</sup> Capital Corporation, Prime Communications, LLC, West Central Consulting Services, Inc. and Stewart

Electric, Inc. (collectively, the "Defendants") (all parties herein are collectively referred to as the "Parties") participated in a Court-ordered mediation session (the "Mediation"), under the guidance of Magistrate Judge Joyce Alexander. At the conclusion of the Mediation, the Parties informed Magistrate Judge Alexander that the Parties had reached the principal terms of a settlement agreement and that American Tower's counsel would prepare a settlement term sheet which would be circulated to both the parties and the Court. The Parties were engaged in settlement discussions from 10:00 AM through approximately 8:00 PM on May 17, 2005. Following the Mediation, American Tower circulated an e-mail to all parties and the Court which set forth the aforesaid terms of settlement.

Moreover, American Tower also anticipated that the Parties would execute a settlement agreement and subsequently file a stipulation of dismissal or an agreement for judgment, thereby allowing the Registry of the Court to release the escrowed funds (the "Interpleader Funds") pursuant to Court order in the specified amounts to the designated Parties. In order for there to be sufficient funds to meet the demands of the Defendants, American Tower had also agreed to supplement the Interpleader Funds in exchange for releases of claims and liens.

Thereafter, on May 18, 2005, the Parties received notice from the Court that the matter was reported settled by the Magistrate Court Clerk (Brown, R.), and dismissed by the Court (Young, J.) on May 19, 2005. Counsel for the Plaintiff immediately contacted the Court's Docket Clerk (Bell, M.) to inform the

Court that the dismissal was premature, and to advise the Court that certain motions remained outstanding and that the Interpleader Funds had not yet been supplemented or disbursed. On June 14, 2005, American Tower received notice that the case was terminated.

Since May 18, 2005, the Parties have continued to engage in settlement discussions regarding the remaining outstanding issue related to the execution of general releases of claims and liens. The Plaintiff is optimistic that settlement will be reached shortly. However, the Plaintiff intends to request another mediation session with Magistrate Judge Alexander, if the Plaintiff does not receive executed copies of the Settlement Agreement in the near future. Nevertheless, in the interest of preserving the rights of the various Parties, the Plaintiff hereby respectfully requests that the Court vacate the entry of dismissal.

**WHEREFORE**, the Plaintiff respectfully requests that this Court vacate its prior order of dismissal.

Respectfully submitted,  
AMERICAN TOWER CORPORATION,  
By its attorneys,

/s/ Gregory J. Aceto  
Gregory J. Aceto, Esq.  
(BBO No. 558556)  
Erin J. Brennan, Esq.  
(BBO No. 660097)  
JOHNSON & ACETO, P.C.  
67 Batterymarch Street  
Boston, MA 02110  
(617) 728-0888

Dated: June 27, 2005